



Home Office

Information Rights Team
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www.gov.uk/home-office

15 June 2015

Freedom of Information Act 2000 request (Our Reference 35423)

Thank you for your e-mail of 18 May 2015, in which you ask whether legally privileged materials have been collected by any UK Government agency or service in relation to Julian Assange. Your request has been handled as a request for information under the Freedom of Information Act 2000. A full copy of your request can be found at Annex B.

We can neither confirm nor deny whether we hold any of the information you have requested by virtue of Sections 40(5), 23(5), 27(4), 31(3) and 44(2) of the Freedom of Information Act 2000 (the Act).

Section 23 of the Act applies when some of the information may relate to bodies dealing with security matters. Section 27 of the Act pertains to information that would, or would be likely to, prejudice international relations between the UK and another State and Section 31 of the Act pertains to information supplied by, or relating to, law enforcement. Section 40 relates to personal information. And Section 44 relates to information the disclosure of which is prohibited by statute or would constitute a contempt of court.

Sections 40(5), 23(5), 27(4), 31(3) and 44(2) exempt us from our duty to say whether or not we hold the information you have asked for.

Annex A to this letter provides further explanation of why the exemptions apply to your request, as well as an assessment of the requisite public interest considerations that reliance on these exemptions entail.

Please note that this response should not be taken as conclusive evidence that the information you have requested does or does not exist.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference **35423**. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
E-mail: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

Brian Dorrington
Information Rights Adviser

Annex A

Explanation of the exemptions under sections 40(5), 23(5), 27(1), 31(3) and 44(1) of the Act

The Home Office neither confirms nor denies that it holds the information you have requested pursuant to exemption 40(5), 23(5), 27(1), 31(3) and 44(1) of the Act. The exemptions are defined by the Act as follows:

23 (1) Information supplied by, or relating to, bodies dealing with security matters.

Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

23 (5) provides that the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

Section 23 is an absolute exemption and no public interest is required.

Section 27

27 (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.

27(4) provides that the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a)-

- (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
- (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organisation or international court.

Section 31

31(1) Information which is not exempt information by virtue of section 30 is exempt if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice

(3)The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

Section 44

44(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any EU obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

Section 23 is an absolute exemption and no public interest is required.

Consideration of the balance of Public Interest

Some exemptions in the Act, referred to as 'qualified exemptions', are subject to a public interest test (PIT). The exemptions under Section 27(1) and Section 31(3) are such exemptions. The PIT is used, in the case of these exemptions, to assess the balance of the public interest for and against the requirement to say whether requested information is held or not. The 'public interest' is not the same as what interests the public. In carrying out a PIT we consider the greater good or benefit to the community as a whole.

The 'right to know' must be balanced against the need to enable effective government and serve the best interests of the public. The Act is 'applicant blind'. This means that we cannot, and do not, ask about the motives of anyone who asks for information.

In providing a response to one person, we are expressing a willingness to provide the same response to anyone, including those who might represent a threat to an individual or to the UK. On this basis please find set out below a consideration of the balance of public interest with respect to neither confirming nor denying whether information you have requested is held by the Home Office.

Public interest consideration in favour of confirming whether or not information is held

The Home Office recognises that there is a general public interest in transparency and openness in Government. It is acknowledged that disclosure of some information could improve public understanding of international co-operation processes relating to criminal investigations and prosecutions. In addition there is a general public interest in understanding whether or not the Home Office has been asked to assist in a particular criminal investigation abroad, particularly if the case is high profile and/or involves a British citizen.

Public interest considerations in favour of maintaining the exclusion of the duty to either confirm or deny.

Section 27(4) – International Relations

It is the duty of the Secretary of State to protect the ongoing affairs of our international partners and to avoid jeopardising any criminal proceedings. Disclosure could affect the UK's relationships with other countries and impede or hamper investigations or legal proceedings either in a specific case or in the future.

Section 31(3) – Law Enforcement

To reveal whether the Home Office does, or does not, hold any of the information requested would be likely to prejudice the law enforcement process, even where it is public knowledge that criminal proceedings are taking place abroad. Disclosure could prejudice law enforcement by:

- Diminishing the chances of a successful prosecution, future charges, or making arrests
- Diminishing the chances of a fair trial
- Endangering victims, witnesses or others as they participate in investigations and proceedings
- Impeding other ongoing or future proceedings
- Facilitating the commission of crime

Following the above consideration we have determined that the public interest favours maintaining the exclusion of the duty to confirm or deny whether we hold the requested information.

Section 40

Additionally section 40(5) is engaged as the information that you have requested relates to a living individual.

Section 40(5) provides that the duty to confirm or deny whether the requested information is or is not held does not arise when to do so would contravene any of the data protection principles.

Whether or not any such information relating to Mr Assange is held by the Home Office would be the personal data of Mr Assange.

We determine that the public interest favours maintaining the exclusion of the duty to confirm or deny whether we hold the requested information.

Section 44

Section 44 (1) of the Act provides that information is exempt information if its disclosure by the public authority holding it is prohibited by or under any other enactment.

Section 44 (2) provides that the duty to confirm or deny whether the requested information is held does not arise if, or to the extent that, to do so would, fall within any of the matters mentioned in 44(1).

The Regulation of Investigatory Powers Act (RIPA) 2000 governs the lawful interception of communications in the UK, specifically interception under the authority of a warrant issued by the Secretary of State. Section 19 (1) imposes a specific duty on those named in subsection 19(2) to keep secret all matters named in subsection 19(3). Subsection 19(2) includes Crown Servants and those employed in law enforcement and telecommunications. Subsection 19(3) includes the existence and contents of any warrant authorising any interception, the steps taken in pursuance of the warrant, and any intercepted material. Subsection 19(3) creates a criminal offence of disclosure of such information, and subsections 19(4) through 19(9) create defences to any proceedings under subsection 19(3).

To confirm that such information was held would be likely to constitute a criminal offence under section 19 of RIPA, which requires the Home Office and other bodies to keep secret the existence of interception. And to deny that such information is held in this case, but to subsequently neither confirm nor deny this in a future case in which similar information was in fact held, would tend to suggest that the information was held in the future case and may therefore constitute a criminal offence under section 19 of RIPA. We determine that the public interest favours maintaining the exclusion of the duty to confirm or deny whether we hold the requested information.

Annex B

35423 18 May

Has any Swedish judicial authority made a mutual legal assistance "interception of communications" request to the Home Office, including directly to the Home Secretary, that concerns Julian Assange?

This first part of your request was a repeat of your earlier under reference 33368 and has been dealt with by the internal review response of 5 June 2015.

New questions

Further, with regards to Julian Assange, is it possible that legally privileged materials of any kind, including recorded conversations from within the Ecuadorean embassy, have been collected by any UK government agency or service, including private companies acting on behalf of the government?

If collection of legally privileged materials is possible, has this collection in fact occurred?

And if this collection has occurred, was this material communicated in any way, including indirectly, including using the method of "parallel construction", to either Sweden (in relation to the Assange v Swedish Prosecution Authority) or to the US (in relation to the US Grand Jury investigation of WikiLeaks)?

(for an explanation of "parallel construction" please review: <https://wikileaks.org/bnd-nsa/sitzungen/11/page-34.html#efmAlaAob>)